

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ROBERT M. HAGAR**  
Claimant

VS.

**OTR EXPRESS, INC.**  
Respondent  
Self-Insured

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Docket No. 202,716

**ORDER**

The respondent requests review of the preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on December 26, 1995.

**ISSUES**

The Special Administrative Law Judge ordered the respondent and its insurance carrier to provide temporary total disability benefits and medical treatment. The respondent requested this review and listed the following as the issues for this review:

- “(1) Whether the Special Administrative Law Judge exceeded his jurisdiction in finding that the claimant suffered an accidental injury;
- “(2) Whether the Special Administrative Law Judge exceeded his jurisdiction in finding the claimant's alleged accidental injury arose out of the course of the claimant's employment; and
- “(3) Whether the Special Administrative Law Judge exceeded his jurisdiction in granting the relief requested by the claimant at the preliminary hearing.”

Notwithstanding the manner in which respondent states its issues on review, from respondent's brief and the record, it appears the essence of its complaint is that claimant failed to prove he injured his knees and shoulder as a result of the work-related accident that occurred on March 6, 1995.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- (1) The Appeals Board has the jurisdiction to review the preliminary hearing issue whether claimant sustained either injury or aggravation to his knees and right shoulder as

a result of an accident arising out of and in the course of his employment with the respondent. See K.S.A. 44-534a.

(2) The preliminary hearing Order of the Special Administrative Law Judge should be affirmed.

Claimant was an over-the-road truck driver working for the respondent. The evidence is uncontroverted that claimant fell and injured himself on March 6, 1995, in Baltimore, Maryland, while working for the respondent. Claimant promptly reported the accident to his dispatcher and sought medical treatment.

Claimant testified the accident occurred when he stepped on a wheel chock as he reached the bottom of a loading dock ladder, causing him to fall to the concrete. He testified his left knee first struck the concrete and then he rolled to the right onto his right shoulder, right knee and right ankle. Shortly after the accident, claimant saw Richard T. Travis, M.D., of Baltimore, Maryland, who took claimant off work and prescribed physical therapy. Because he was unable to drive his truck, two weeks later claimant flew into Kansas City where he hired someone to drive him home to Edmond, Oklahoma, in his personal vehicle.

The records from Richard T. Travis, M.D., indicate that he saw claimant on March 6, 1995 with complaints of bilateral knee pain, pain in the cervical spine and shoulder area and pain in the right hand and elbow. After seeing claimant three additional visits, Dr. Travis diagnosed contusions and abrasions of the left knee, contusion of the right shoulder and back, and psychogenic overlay. The records from Dr. Stephen B. Conner, an orthopedic surgeon in Edmond, Oklahoma, whom claimant consulted in 1995 after he returned home, indicate claimant complained to him of injuries to both knees, right hand, arm and shoulder. Dr. Conner felt claimant had soft tissue injury to the right shoulder and right lower extremity. He recommended an MRI and neurological evaluation. The medical records from Mark F. Kowalski, M.D., another orthopedic specialist in Oklahoma, indicate he saw claimant on July 31, 1995 for right shoulder treatment although claimant was also experiencing symptoms in other parts of his body that he related to the March 1995 accident. Dr. Kowalski diagnosed impingement syndrome in the right shoulder and recommended EMG and nerve conduction tests for further evaluation. Claimant recently saw Topeka orthopedic surgeon, Michael T. McCoy, M.D., who believes claimant's right shoulder and knee symptoms are related to the March 1995 accident.

The Appeals Board agrees with the Special Administrative Law Judge that the evidence presented to date establishes that it is more probably true than not that claimant sustained injury to his right shoulder and knees as a result of a compensable work-related accident on March 6, 1995, for which he is entitled to workers compensation benefits.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Special Administrative Law Judge William F. Morrissey dated December 26, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Bryan, Topeka, Kansas  
Richmond M. Enochs, Overland Park, Kansas  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director